

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

IN RE: )  
)  
MUMA SERVICES, INC., et al. ) Chapter 11  
)  
\_\_\_\_\_ ) 01-00926 through 01-00950 (MFW)  
)  
SEA STAR LINE L.L.C., )  
)  
Appellant, )  
)  
v. ) Civil Action No. 02-1345-SLR  
)  
LAKECREST OFFICE INVESTORS, )  
L.L.C., )  
)  
Appellee. )

**MEMORANDUM ORDER**

At Wilmington this 14th day of May, 2003, having reviewed the appeal of Sea Star Line, L.L.C. and the papers submitted in connection with the appeal;

IT IS ORDERED that the appeal is denied and the bankruptcy court's order issued June 11, 2002 is affirmed, for the reasons that follow:

1. **Standard of Review.** This court has jurisdiction to hear an appeal from the bankruptcy court pursuant to 28 U.S.C. § 158(a). In undertaking a review of the issues on appeal, the court applies a clearly erroneous standard to the bankruptcy court's findings of fact and a plenary standard to that court's legal conclusions. See Am. Flint Glass Workers Union v. Anchor

Resolution Corp., 197 F.3d 76, 80 (3d Cir. 1999). With mixed questions of law and fact, the court must accept the bankruptcy court's "finding of historical or narrative facts unless clearly erroneous, but exercise[s] 'plenary review of the [bankruptcy] court's choice and interpretation of legal precepts and its application of those precepts to the historical facts.'" Mellon Bank, N.A. v. Metro Communications, Inc., 945 F.2d 635, 642 (3d Cir. 1991) (citing Universal Minerals, Inc. v. C.A. Hughes & Co., 669 F.2d 98, 101-02 (3d Cir. 1981)). The district court's appellate responsibilities are further informed by the directive of the United States Court of Appeals for the Third Circuit, which effectively reviews on a de novo basis bankruptcy court opinions. In re Hechinger, 298 F.3d 219, 224 (3d Cir. 2002); In re Telegroup, 281 F.3d 133, 136 (3d Cir. 2002).

2. **Background.** On March 21, 2001, debtors Murphy Marine Services, Inc. et al. ("debtors") filed their voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware. By motion dated April 1, 2002, debtors sought bankruptcy court authority to sell certain assets to appellant Sea Star Line L.L.C. ("Sea Star") pursuant to 11 U.S.C. § 363(b)(1) or, pursuant to bidding and auction procedures to be approved by the bankruptcy court, to another purchaser of the assets determined to have submitted the "highest and best" bid

for those assets. (D.I. 4, Exs. 1, 2) On April 12, 2002, the bankruptcy court entered an order approving the bidding procedures and establishing an April 25, 2002 hearing date for debtors' sale motion. (D.I. 4, Ex. 3)

3. On April 15, 2002, debtors filed a motion pursuant to 11 U.S.C. § 365(i) seeking the following relief:

a. Establishing cure amounts necessary to assume, inter alia, certain unexpired leases for nonresidential real property, denominated as "'Designated Contracts,'" and

b. Authorizing debtors to assume and assign such Designated Contracts.

(D.I. 4, Ex. 4)<sup>1</sup>

4. Appellee Lakecrest Office Investors, LLC ("Lakecrest") was the lessor, and debtors were the lessee, of certain nonresidential real property known as the Tampa Administration/Payroll Transfer Building located in Tampa, Florida ("the Lakecrest Lease"). The Lakecrest Lease was listed among the Designated Contracts to be assumed and assigned by debtors. Lakecrest timely filed an objection to the cure amount assigned to the Lakecrest Lease. The debtors stated the cure amount was zero. Lakecrest argued that the correct cure amount was \$9,683.43.

---

<sup>1</sup>The court notes that this motion was heard on shortened notice. (D.I. 4, Ex. 5)

5. At the April 22, 2002 hearing , the following colloquy occurred:

MR. EPLING: Your Honor, that takes us to Item Number 24, which is the debtors' **motion requesting the Court to establish cure amounts necessary to assume certain unexpired leases** and executory contracts relating to the proposed sale of those unexpired leases and executory contracts. Your Honor has not, so far as I know, signed an order to shorten time on the consideration of this motion.

THE COURT: Well, it was one of a dozen motions filed asking for shortened time.

MR. EPLING: I -

THE COURT: Why do I need to decide the cure amounts today and why was it not filed weeks ago when the sale motion was?

MR. EPLING: Your Honor, it's part of the sale's process that was approved on April the 8th, **it's baked right into the sales process. That the Sea Star people, who are the stalking horse bidders, were given a week from April the 8th to April the 15th to determine what executory contracts and leases they wanted assigned to them as part of the bidding procedures. And that we were required by the procedure that was set up on April the 8th, and noticed out to everyone, to file a designation of those contracts on April the 15th, which we did.**

And that objections were set for, I think, this past Friday at noon, which happened, people - we got a number of objections which I can go through in detail for you. And this was set down as the hearing date for dealing with the proposed cure amounts.

As it has happened, we really have very little in the way of controversy with respect to the leases and contracts. Because, one, the list is very short. **The things that Sea Star wanted to take came down from a fairly substantial list initially to a very short list.** And inasmuch as the debtor has proposed some cure amounts for the personal property agreements at zero and those

amounts have been objected to by the cure parties as not being sufficient, we are prepared to drop those cures off the list, take them off the agenda and Your Honor needn't consider them because they won't be part of the sale. So, I think where we are, Your Honor, it is down to - **in terms of what needs to get resolved today for NPR are two real estate leases: One is our lease in Tampa of an office building. The landlord filed an objection that said we owe them \$9,000 more than we thought we owed them and the explanation for that is April rent, which we're prepared to pay as part of the cure,**

\* \* \*

MR. MILLER: Your Honor, Rick Miller. I'm here on the other real property lease, I'm here for Lakecrest Office Investors.

THE COURT: Oh, okay.

MR. MILLER: But I believe I heard counsel say that they were going to pay my client's rent. I was unsure what the timing of the payment would be. I don't know if someone could speak to that, my client would be interested to know what the timing of the payment would be.

THE COURT: Well, let me hear from the debtor.

MR. EPLING: Your Honor, the procedure that we have in place is that we will hold an auction. If there -- competitive bids are due in at five o'clock today. If there are competitive bids, we will hold an auction at actually Mr. Horstmann's offices on the 24th, Wednesday, to determine the highest and best bid. If there are no competitive bids, we won't hold the auction.

Your Honor has granted us the ability to come back here on the 25th on standby, 10:30 in the morning, to confirm the winning bid, whether that's Sea Star or somebody else. And we anticipate that we will close, therefore, on Friday, the 26th. **So, the assumption and assignment and cure would all take place as part of the closing on the 26th of this month.**

MR. MILLER: That's fine, Your Honor.

THE COURT: All right. And so with the debtors' agreement to pay the April rent on the 26th at closing, you'll withdraw your objection.

MR. MILLER: Well, the invoice that was attached

to my cure objection in that full amount, I would think --

MR. EPLING: It's a little more. The difference is \$9,000 -

MR. MILLER: Right.

MR. EPLING: - Your Honor. It's just -

MR. MILLER: Small amount.

THE COURT: All right.

MR. EPLING: **We will cure the full amount requested by Lakecrest.**

THE COURT: All right.

MR. MILLER: **And the objection is withdrawn upon that representation.**

THE COURT: All right.

MR. MILLER: Thank you.

\* \* \*

MR. ROBINSON: Yes, thank you. And Mr. Epling has correctly characterized the - our request for a purchase price reduction and that **we will submit to this Court, together with the debtor, hopefully within the next week or so, stipulations regarding cure amounts or we will simply just ask the debtor to reject contracts that we are not able to come to some sort of agreement with the contracting parties on.**

THE COURT: All right. And is there any deadline, though, for resolution of the cure amounts?

MR. ROBINSON: It's very difficult for us to - it would be very difficult for us to set a deadline, Your Honor. The problem with the cure amounts is many of the ones that were listed as zero, we understood, were monthly accounts that had been kept current. Some of the others we just didn't have information on and we have been through counsel that have appeared this morning in court, we have been able to talk to many of the bigger ones and I'm hopeful that we will have an agreement with all of them by Thursday or Friday before closing. Obviously, it's important to us since we're the one who's going to be paying the cure amounts, to know what it is that we're getting into regarding this. And certainly the Port of San Juan is the largest one and we have had discussions with counsel and we'll continue tomorrow until we get it resolved.

THE COURT: Well, I would suggest this. I have no problem with the change. I think the terms

of it which require the debtor to cover cures up to \$500,000 was on sufficient notice that this change is not material. **I will want - at the sale hearing, I'll want some kind of an indication as to how long any resolution of still remaining cure issues are anticipated to take, and maybe I'll set a hearing on any of those cure issues or a deadline by which they must be resolved.** Just so the other parties to the contracts are not left in limbo, obviously if the other parties to the contract have no objection to taking time to resolve the issues, then -

MR. ROBINSON: We're not sure we'll be able to contact -

THE COURT: All?

MR. ROBINSON: -- all of them before Thursday's hearing, which was part of the problem after the court this morning made reference to the fact that we needed to root those people out. We don't have good contact information through the debtor on many of those. So, - but we will - we will endeavor to give the Court the very best progress report on Thursday.

THE COURT: Or an estimate of time that you need after that time.

MR. ROBINSON: Okay.

THE COURT: So, I'll simply continue the hearing then to whatever time you think it will be necessary to have some resolution.

MR. ROBINSON: Okay. Thank you, Your Honor.

THE COURT: All right. Then in the meantime, I guess I'll just continue this to the sale hearing, the motion to -

MR. EPLING: Yes, that would be fine, Your Honor.

(D.I. 4, Ex. 12 at 281-83, 285-87, 289-92) (emphasis added).

6. No other bids for the subject bankrupt estate assets were received and, by order dated April 26, 2002, the bankruptcy court authorized debtors to sell the subject assets to Sea Star, free and clear of liens, claims and encumbrances pursuant to 11 U.S.C. § 363(b). (D.I. 4, Ex. 10) The asset sale

closed on April 26, 2002.

7. On May 15, 2002, debtors filed a motion for an order rejecting various leases of non-residential real property and equipment pursuant to 11 U.S.C. § 365. The Lakecrest Lease was included among those leases to be rejected. (D.I. 4, Ex. 13 at 305) Lakecrest objected to the proposed rejection based upon the representations made at the April 22, 2002 hearing. (D.I. 4, Ex. 14)

8. At a June 11, 2002 hearing, the bankruptcy court considered debtors' motion to reject and Lakecrest's objection thereto. Sea Star argued in response to Lakecrest's objection that the rejection of the Lakecrest Lease was justified because Lakecrest had tried to "change the terms of the deal" by requesting either financial information or three months' security deposit. (D.I. 4, Ex. 20 at 479-81) Based on all of the circumstances, the bankruptcy court concluded the Lakecrest Lease "was assumed and assigned on the 22nd, and . . . I orally approved that agreement to assume and assign it subject to actually having closing. Closing occurred." (D.I. 4, Ex. 20 at 487) The bankruptcy court further concluded that there was no explicit "carve out" of the Lakecrest Lease at the April 26, 2002 closing; even if there were, "it was not on notice to Lakecrest, and they have a right to rely on the oral agreement on the record on the 22nd that was approved by me. This would be one of the

contracts that was assumed and assigned as part of the closing of the sale." (D.I. 4, Ex. 20 at 488)

9. This court finds no error in the bankruptcy court's holding. In a proceeding that was structured by debtors and Sea Star to proceed on an expedited basis, it truly is ironic that these same parties rest their argument on the fact that no formal order was entered vis a vis this one landlord. The bankruptcy court's conclusion is an accurate reflection of the record and an appropriate exercise of its equitable jurisdiction.

Sue L. Robinson  
United States District Judge